

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SPHERE 3D CORP., : Case No. 1:23-cv-02954- PKC-VF
: Plaintiff and
: Counterclaim-
: Defendant, :
: vs.
: :
GRYPHON DIGITAL MINING, INC., :
: Defendant and
: Counterclaim-Plaintiff. :
----- X -----

**DECLARATION OF GREGORY N. WOLFE IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR ISSUANCE OF HAGUE CONVENTION REQUEST FOR
INTERNATIONAL JUDICIAL ASSISTANCE TO
OBTAIN EVIDENCE IN UNITED KINGDOM**

Pursuant to 28 U.S.C. § 1746, I, Gregory N. Wolfe, hereby declare under penalty of perjury that the following is true to the best of my knowledge and belief:

1. I am a member of the bar of this Court and a partner with the law firm DNF LLP, counsel for Plaintiff Sphere 3D Corp. ("Sphere") in the above-captioned action. I submit this declaration in support of Plaintiff's Unopposed Motion for Issuance of Hague Convention Request for International Judicial Assistance to Obtain Evidence in the United Kingdom.

2. Attached as Exhibit A is Plaintiff's Request for International Judicial Assistance Pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ("Letter of Request").

3. Attached as Exhibit B is a true and correct copy of Defendant Gryphon Digital Mining, Inc.'s ("Gryphon") Responses And Objections To Sphere 3D Corp.'s First Amended Set Of Interrogatories.

4. Attached as Exhibit C is a true and correct copy of an August 5, 2021, email from Mr. Tolhurst to Peter Tassiopoulos, to which Mr. Tolhurst attached a revised version of the MSA.

5. Attached as Exhibit D is a true and correct copy of a February 10, 2023, email from Patricia Trompeter to Mr. Tolhurst in which Ms. Trompeter updates Mr. Tolhurst on the status of Sphere's investigation into the "Spoofing Incident," in which Gryphon transferred Sphere's digital assets to a malicious third party.

6. Attached as Exhibit E is a true and correct copy of a December 30, 2021, email from Mr. Tolhurst to Kurt Kalbfleisch and Mr. Tassiopoulos, to which Mr. Tolhurst attached an invoice from the U.S. Customs and Border Protection Agency relating to a shipment of Sphere's miners.

7. Attached as Exhibit F is a true and correct copy of a September 23, 2021, email from Mr. Tolhurst to Mr. Tassiopoulos, to which Mr. Tolhurst attached a draft agreement with Core Scientific, a third-party host for Sphere's miners.

8. Attached as Exhibit G is a true and correct copy of an August 31, 2022, email from Mr. Tolhurst to Mr. Kalbfleisch, to which Mr. Tolhurst attached the calculation purportedly supporting the fee owed to Gryphon pursuant to the MSA.

9. Attached as Exhibit H is a true and correct copy of a June 17, 2022, text message thread between Mr. Tolhurst and Alexander Tierney in which Mr. Tolhurst inquires as to Sphere's hosting needs for its miners.

10. Attached as Exhibit I is a true and correct copy of a December 15, 2021, email thread between Mr. Tolhurst and Ms. Trompeter discussing where to send an upcoming shipment of Sphere's miners.

11. Attached as Exhibit J is a true and correct copy of a December 7, 2021, email from Mr. Tolhurst to Mr. Tassiopoulos in which Mr. Tolhurst inquires about the status of a shipment of Sphere's miners.

12. Attached as Exhibit K is a true and correct copy of an August 24 to August 26, 2022, email thread between Mr. Tolhurst, Mr. Kalbfleisch, Ms. Trompeter, and Rob Chang in which Sphere directs Gryphon to transfer certain digital assets Gryphon holds on behalf of Sphere.

13. Attached as Exhibit L is a true and correct copy of an August 22, 2023, email from Mr. Kalbfleisch to Mr. Tolhurst and Mr. Chang where Mr. Kalbfleisch states that Gryphon "paid [itself] 2X for the April MSA fees."

14. Attached as Exhibit M is a true and correct copy of an August 24, 2021 text exchange between Mr. Chang, Mr. Tassiopoulos, and Mr. Tolhurst in which Messrs. Chang, Tassiopoulos, and Tolhurst discuss securing hosting service for Sphere's miners.

15. As the representative exhibits attached here demonstrate, Mr. Tolhurst was involved in negotiating the MSA, has knowledge of the parties' performance under the MSA, and calculated the fees due to Gryphon under the MSA.

16. Upon the Court's issuance of the Letter of Request, I will cause Sphere's English solicitors to file the Letter of Request, along with any accompanying application, with the Royal Courts of Justice, The Senior Master (King's Bench Division), Royal Courts of Justice Strand, London WC2A 2LL, England.

Dated: August 21, 2024
New York, NY

DNF LLP

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